THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZANGO, INC., f/k/a 180solutions, Inc., a Washington corporation, a/k/a MetricsDirect, Plaintiff, v. INTERNET BRANDS, INC., a Delaware Corporation, d/b/a Cars Direct, Defendant.	NO. CV 7-506 RSL DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO PLAINTIFF'S COMPLAINT FOR MONIES DUE

ANSWER

Defendant Internet Brands, Inc. answers plaintiff's Complaint as follows:

1. Defendant does not contest the allegations in paragraph 1 of the Complaint.

2. Defendant admits the allegations in paragraph 2 of the Complaint.

3. Defendant admits the allegations in paragraph 3 of the Complaint.

4. Defendant denies the allegations in paragraph 4 of the Complaint, but does not contest venue in this Court.

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5. Defendant denies the allegations in paragraph 5 of the Complaint, but does not contest personal jurisdiction over it for purposes of this lawsuit only.

6. Defendant is without information and knowledge sufficient to form a belief as to the truth of the first sentence of paragraph 6 of the Complaint and therefore denies that allegation, but admits that plaintiff holds itself out as selling internet advertising "linked to individualized searching."

7. Paragraph 7 of the Complaint is admitted.

8. Defendant admits that plaintiff agreed to provide targeted internet advertising for the defendant and in connection with that agreement, "insertion orders" were signed by defendant. All other allegations in paragraph 8 are denied.

9. Defendant admits signing the document attached as *Exhibit B* to the Complaint, but denies the remaining allegations in paragraph 9 of the Complaint.

10. With respect to paragraph 10 of the Complaint, the terms of any written agreement signed by defendant are as stated in the document, and defendant denies the allegations in paragraph 10 of the Complaint to the extent that they are inconsistent with those terms.

11. With respect to paragraph 11 of the Complaint, the terms of any written agreement signed by defendant are as stated in the document, and defendant denies the allegations in paragraph 11 of the Complaint to the extent that they are inconsistent with those terms.

12. With respect to paragraph 12 of the Complaint, the terms of any written agreement signed by defendant are as stated in the document, and defendant denies the allegations in paragraph 12 of the Complaint to the extent that they are inconsistent with those terms. Defendant denies that the general terms applicable to all the contracts between defendant and plaintiff are contained in *Exhibit C* to the Complaint.

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13. The allegations in paragraph 13 of the Complaint are denied.

14. The allegations in paragraph 14 of the Complaint are denied.

15. The allegations in paragraph 15 of the Complaint are denied.

16. The allegations in paragraph 16 of the Complaint are denied.

17. The allegations in paragraph 17 of the Complaint are denied.

18. Defendant responds to paragraph 18 of the complaint by incorporating its responses to paragraphs 1-17 of the complaint.

19. The allegations in paragraph 19 of the Complaint are denied.

20. The allegations in paragraph 20 of the Complaint are denied.

21. Defendant responds to paragraph 21 of the complaint by incorporating its responses to paragraphs 1-20 of the complaint.

22. The allegations in paragraph 22 of the Complaint are denied.

23. Any remaining allegations in the complaint are denied.

AFFIRMATIVE DEFENSES

In further answer to plaintiff's Complaint, defendant makes the following affirmative defenses:

24. Plaintiff's claims are barred by the doctrines of estoppel, waiver, and failure of consideration.

25. To the extent that plaintiff is entitled to damages, those damages should be offset by amounts owed to defendant.

COUNTERCLAIM

Defendant alleges as follows:

1. This Court has jurisdiction over defendant's counterclaim against plaintiff pursuant to 28 U.S.C. § 1332 as the parties are citizens of different states and the amount in controversy exceeds $75,000.

2. Venue is proper in this Court.

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Facts

3. Beginning in 2004, Zango, Inc., formerly known as 180solutions, Inc., through its division, 180technologies, doing business as MetricsDirect, (collectively, "Counterclaim Defendant") offered to sell advertising services to Internet Brands, Inc. Counterclaim Defendant held itself out has having expertise in providing advertising services for clients that would target internet computer users for the type of product or service offered by the clients.

4. Internet Brands explained that it provided marketing services related to sales of automobiles in the United States. Internet Brands explained that it maintained two web sites, CarsDirect.com and Autos.com, and provided services to help direct internet users interested in buying automobiles to dealers located in the United States. The nature of Internet Brands' business was discussed several times, and in detail, with Counterclaim Defendant. Counterclaim Defendant stated that it could provide targeted users for that market.

5. Counterclaim Defendant placed advertisements through programs installed on individual computers. Counterclaim Defendant claimed that if a user of one of these computers made a search on the internet using keywords relevant to purchasing a car, it could flash an advertisement to that user consisting of Internet Brands' web site. The users who were directed to the Internet Brands' web sites were referred to as "traffic."

6. Counterclaim Defendant knew, or should have known because of its discussions with Internet Brands, that Internet Brands' business related to automobiles was limited to marketing and sales within the United States.

7. Counterclaim Defendant charged Internet Brands for each visitor to Internet Brands' web sites.

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8. Counterclaim Defendant was capable of determining where the traffic originated. It knew, or should have known, that by mid-2005, more than half of the traffic being provided to Internet Brands' automobile sales web sites was from outside the United States.

9. In May 2006, Internet Brands accidentally discovered that a substantial portion of the traffic being directed to its automobile sales web sites was from outside the United States. Internet Brands immediately contacted Counterclaim Defendant to complain about the international traffic.

10. Counterclaim Defendant responded that Internet Brands would have to pay additional money to receive traffic that only originated from the United States. This was the first time that Internet Brands was told that it would have to pay more money to limit its traffic to potential U.S. customers.

11. Internet Brands complained that this was contrary to the agreement of the parties, and insisted on a refund for the international traffic that it had received. More than $900,000 of the nearly $2 million paid by Internet Brands to Counterclaim Defendant was for international traffic.

12. Internet Brands refused to pay any further invoices until a resolution was reached of the money paid for international traffic. Throughout May of 2006, the parties attempted to resolve their differences over whether their agreement included payment for international traffic, but were unable to reach an agreement.

13. Counterclaim Defendant continued to provide traffic to Internet Brands until August 2006, when final attempts to reach a resolution were unsuccessful and it terminated its services.

First Claim—Breach of Contract

14. Internet Brands re-alleges paragraphs 1 through 13 of its counterclaim.

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15. Counterclaim Defendant breached its agreement with Internet Brands, and Internet Brands is entitled to damages as a result of that breach.

16. Counterclaim Defendant breached its obligations of good faith and fair dealing under its express and implied agreements with Internet Brands and is entitled to damages for those breaches in an amount to be proven at the time of trial.

Second Claim—Breach of Warranties

17. Internet Brands re-alleges paragraphs 1 through 16 of its counterclaim.

18. Counterclaim Defendant breached implied warranties made by it, including an implied warranty that all traffic provided to Internet Brands would originate from the United States. Internet Brands was damaged by the breach of these implied warranties and is entitled to damages in an amount to be proven at the time of trial.

Third Claim—Misrepresentation

19. Internet Brands re-alleges paragraphs 1 through 18 of its counterclaim.

20. Counterclaim Defendant misrepresented, or failed to disclose, material information to Internet Brands, including failing to disclose that a substantial portion, or majority, of traffic provided to it for the automobile sales web sites would originate from outside the United States, even though Counterclaim Defendant knew, or should have known, that this traffic would be of little or no value to Internet Brands and its clients.

21. These misrepresentations and omissions were made either intentionally or negligently. Internet Brands relied on these misrepresentations or omissions to its detriment, and these misrepresentations or omissions caused damages to Internet Brands in an amount to be proven at the time of trial.

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Fourth Claim—Violation of the Washington Consumer Protection Act

22. Internet Brands re-alleges paragraphs 1 through 21 of its counterclaim.

23. Counterclaim defendant engaged in unfair and deceptive practices that violated the Washington Consumer Protection Act. These acts included, but are not limited to, charging Internet Brands for traffic originating from outside the United States even though counterclaim defendant knew, or should have known, that this traffic had no value to Internet Brands and their clients, and failed to disclose that it would charge more for traffic that originated exclusively from the United States.

24. Upon information and belief, Counterclaim Defendant failed to make similar disclosures to other customers and that there is a real and substantial potential for repetition of this conduct.

25. Counterclaim defendant engaged in these repeated unfair and deceptive acts during the course of, and in furtherance of, its business. These acts caused damages to Internet Brands, which was directly caused by these acts.

26. Internet Brands is entitled to damages for counterclaim defendant's violation of the Washington Consumer Protection Act, including damages in an amount to be proven at trial, prejudgment interest, three times the amount of damages up to an additional amount of $10,000.00, attorney fees, costs, and expenses.

Fifth Claim—Negligence

27. Internet Brands re-alleges paragraphs 1 through 26 of its counterclaim.

28. Counterclaim Defendant held itself out as having expertise in internet advertising and in providing traffic to its clients that was targeted to their businesses.

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29. Counterclaim Defendant either intentionally or negligently provided non-U.S. traffic to Internet Brands that Counterclaim Defendant knew, or should have known, was not appropriate. Counterclaim Defendant charged money for providing that traffic to Internet Brands and should be required to refund that money to Internet Brands.

REQUEST FOR RELIEF

Having fully answered plaintiff's Complaint, Internet Brands asks the Court to give the following relief:

1. That all of plaintiff's claims be dismissed with prejudice;

2. That Internet Brands be awarded damages on its counterclaims in an amount to be proven at trial;

3. That Internet Brands be awarded up to $10,000.00 in additional exemplary damages as provided by the Washington Consumer Protection Act;

4. That Internet Brands be awarded prejudgment interest;

5. That Internet Brands be awarded its attorney fees for defending this action and prosecuting its counterclaims to the extent permitted by law; and

6. That the Court grant such further relief as appropriate.

DATED: May 25, 2007.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on May 25, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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I also hereby certify that there are no attorneys on the Manual Notice List in this case.

DATED: May 25, 2007, at Seattle, Washington.

Theresa A. Redfern
Theresa A. Redfern, Declarant

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